

**AN ORDINANCE CREATING  
CHAPTER 82 “CONSERVATION EASEMENT PROGRAM”  
OF THE SHENANDOAH COUNTY CODE**

**BE IT ORDAINED BY THE** Board of Supervisors of Shenandoah County, Virginia, that Chapter 82 of the Shenandoah County Code, “**CONSERVATION EASEMENT PROGRAM**” be created as follows:

- (1) By adding the following chapter:

**CONSERVATION EASEMENT PROGRAM**

**82-1. Purpose and Intent.**

To further the goals of the County’s Comprehensive Plan and provide a means to assist county landowners in protecting and preserving farm and forest land, open space, scenic vistas, historic sites, water resources and environmentally sensitive lands, and the county’s rural character. This chapter establishes a program which will enable the County to acquire voluntary conservation easements either through donation or, should funding be made available, through purchase, as one means of assuring these valuable County resources are protected.

**82-2. Authority/applicability.**

The Shenandoah County Conservation Easement Program is established under the provisions of the Virginia Conservation Easement Act, Chapter 10.1, Title 10.1 (10.1-1009 et. seq.), Code of Virginia, the Open Space Land Act, Chapter 17, Title 10.1 (10.1-1700 et. seq.), Code of Virginia, and the Public Recreational Facilities Authorities Act, Chapter 56, Title 15.2 (15.2-5600 et. seq.), Code of Virginia and shall be available for all land in the County. The owner shall voluntarily offer any conservation easement acquired pursuant to this chapter.

**82-3. Definitions.**

- A. The following definitions shall apply in the interpretation and implementation of this chapter:

(1) **AUTHORITY**– The Shenandoah County Conservation Easement Authority.

(2) **CONSERVATION EASEMENT**– A nonpossessory interest in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations of affirmative obligations, the purpose of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

(3) DEVELOPMENT RIGHT– The number of residential building lots that may be created from the parent tract in a given zoning district per the Shenandoah County Zoning and Subdivision Ordinances.

(4) OWNER– The owner or owners of the freehold interest of the parcel.

(5) PROGRAM ADMINISTRATOR– The Director of Planning & Zoning.

(6) PARCEL– A lot or tract of land, lawfully recorded in the Clerk’s Office of the Circuit Court of Shenandoah County. Because a conservation easement may contain one or more parcels, for the purposes of this chapter the term “parcel” shall include all parcels covered by, or proposed to be covered by, the conservation easement.

82-4. Designation of program administrator; powers and duties.

A. *Designation.* The Director of Planning & Zoning is hereby designated as the program administrator.

B. *Powers and duties.* The program administrator, or his designee, shall have the following powers and duties with respect to the program:

- (1) Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.
- (2) Evaluate all applications to determine their eligibility and their ranking based on their score, and make recommendations thereon to the Authority.
- (3) Determine the number of usable development rights existing on each subject parcel subject to an application.
- (4) Where funding is available for purchase, coordinate the preparation of appraisals.
- (5) Provide staff support to the Authority.
- (6) Assure that the terms and conditions of all easements are monitored and complied with by coordinating with each easement holder.

82-5. Establishment of Conservation Easement Authority; powers and duties.

A. *Establishment.* The Shenandoah County Conservation Easement Authority is created under the Public Recreational Facilities Authorities Act, Chapter 56 of Title 15.2 (15.2-5600, et. seq.), Code of Virginia. The Authority shall consist of seven members, appointed by the Board of Supervisors, to be comprised of one member of the Board of Supervisors, one member of the Planning Commission, and five citizen members. Members shall serve four-year terms except that three members initially shall serve two year terms. Members shall be eligible for

reappointment. The committee shall elect a chairman and vice-chairman at its first meeting each calendar year.

B. *Powers and Duties.* The Authority shall have the powers and duties to:

- (1) Acquire and co-hold easements pursuant to the provisions of the ordinance.
- (2) Apply for and pursue grants, other funding, and gifts from the Virginia Land Conservation Fund, state and federal agencies, and private persons and entities for the purchase of easements.
- (3) Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.
- (4) Review the ranking of applications recommended by the program administrator and make a determination as to whether an easement donation offer should be accepted and, subject to funding availability, which, if any, conservation easements should be purchased.
- (5) Annually review the program's eligibility and ranking criteria and recommend to the Board of Supervisors any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.
- (6) Take action to enforce compliance with terms of easements being co-held by the Authority.
- (7) Exercise any powers authorized by the Public Recreation Facilities Authorities Act.

82-6. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria:

- (A) The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan.
- (B) The proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in Section 8 (Easement Terms and Conditions).
- (C) The parcel shall obtain at least fifteen (15) points under the ranking criteria set forth under Section 7 (Ranking Criteria) unless the Authority finds that it is in the best interest of the County

to waive this requirement.

#### 82-7. Ranking criteria.

In order to effectuate the purposes of this chapter, parcels for which applications for purchase have been received shall be ranked according to the criteria and the point values assigned thereto as forth herein. Points shall be rounded to the first decimal.

##### A. Farm and forest land protection.

(1) The parcel contains prime farm land as identified by the Shenandoah County Soil Survey:  $\frac{1}{2}$  point for each 10 acres containing such soils, for up to a total of five points.

(2) The parcel is currently located within an Agriculture & Forest District: four points.

(3) The parcel has an approved nutrient management plan and/or employs agricultural best management practices as approved by the Lord Fairfax Soil and Water Conservation District or the Natural Resources Conservation Service: one point.

(4) The parcel is a working family farm: five points if at least one family member's principal occupation and income (more than half) is farming or foresting the parcel; three points if at least one family member produces farm products derived from the parcel.

##### B. Natural resources protection.

(1) The parcel fronts on the Shenandoah River or any perennial stream identified by the most recent USGS quad maps or other reliable sources: one point plus an additional one point for every thousand feet of linear stream frontage.

(2) The parcel is within a watershed identified as impaired on the Virginia Department of Environmental Quality's Impaired Waters List: two points.

(3) The parcel contains perennial springs or wetlands as identified on the most recent USGS quad maps or other reliable sources: two points.

(4) The parcel is within a sensitive groundwater recharging area as demonstrated by the presence of sinkholes or karst topography: one point.

(5) The parcel is located within the 100-year floodplain:  $\frac{1}{2}$  point for every ten acres in the floodplain up to a total of five points.

##### C. Cultural, historical, recreational, and scenic resources.

(1) The parcel is located within the Fisher's Hill & Toms Brook Battlefields Preservation Plan: four points for being located in the Core area; two points for being located in the Study area.

(2) The parcel shares a boundary with property owned or protected by the Shenandoah Valley Battlefields Association or other recognized preservation organization: one point plus one additional point for every thousand feet of shared boundary.

(3) Parcel is listed on the State or National Register of Historic Places: two points.

(4) Parcel contains or adjoins a parcel containing a historic structure identified by the Shenandoah County Survey or otherwise documented as being over 100 years old: two points.

(5) Parcel adjoins a state maintained road: one point for each 500 feet of road frontage along a designated Virginia scenic highway or byway; one point for each 1,000 feet of road frontage on a nondesignated public road.

#### D. Open space protection.

(1) Parcel adjoins the National Forest, or any national, state, or local park: one point plus one additional point for every thousand feet of shared boundary.

(2) Parcel adjoins an existing permanent conservation easement: one point plus one additional point for every five hundred feet of shared boundary.

(3) Acreage: one point for every fifty acres the easement will encompass.

#### E. Threat to Development.

(1) Parcel contains usable development rights:  $\frac{1}{2}$  point per usable development right.

(2) Parcel is not zoned Agriculture or Conservation: two points.

#### F. Fund Leveraging.

(1) Non-local government funding has been identified to leverage the purchase of the conservation easement: one point for each 10% of the total purchase price for which those funds can be applied. Donation of all or a portion of the easement by the owner shall be considered fund leveraging and points awarded at the same rate.

#### 82-8. Easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act and of this chapter. The deed of easement shall be in a form approved by the County Attorney and shall contain, at a minimum, the following provisions:

(A) Restrictions. In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and may include, but not necessarily be limited to, restrictions pertaining to:

- (1) The accumulation of trash, junk, and inoperable vehicles;
- (2) The display of billboards, signs and advertisements;
- (3) The management of forest resources;
- (4) Grading, blasting or earth removal;
- (5) The number of new dwellings and the number and size of outbuildings and farm buildings or structures;
- (6) The conduct of industrial or commercial activities on the parcel; and
- (7) Monitoring of the easement.

(B) Designation of easement holders. The Authority and the Shenandoah County Board of Supervisors shall be the co-holders of all easements acquired under this program. The Authority shall seek one or more public bodies, as defined in Virginia Code §10.1-1700, to be additional co-holders in the deed of easement or added by the Board of Supervisors and the Authority later, unless the Authority finds additional co-holders to be not feasible or not advisable.

#### 82-9. Application and evaluation procedure.

Each application for a conservation easement shall be processed as follows:

Application materials to be provided to owner. The application materials provided by the program administrator to an owner shall include, at a minimum, a standard application form, a sample deed of easement and information about the program.

(A) Application form.

(1) Each application shall be submitted on a standard form prepared by the program administrator. The application form shall require, at a minimum, that the owner:

- (a) Provide the name and address of all owners of the parcel;

- (b) The acreage of the parcel;
- (c) The Tax Map and parcel number;
- (d) The zoning designation of the parcel;
- (e) Permission for the program administrator to enter the property after reasonable notice to the owner to evaluate the parcel and for the County's assessor or an independent appraiser to appraise the property;
- (f) Identification of all lien holders on the parcel, including, without limitation, holders of deed of trust liens and judgment liens; and
- (g) Identify whether it is his desire to donate or sell an easement.

(2) The application form shall also include a space for an owner to indicate whether he volunteers to have his parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to state those voluntary, additional restrictions.

(B) Submittal of application. Applications shall be submitted to the office of the program administrator. An application may be submitted at any time. However, applications involving an easement purchase received after June 1 shall be evaluated in the following fiscal year.

(C) Evaluation by program administrator. The program administrator shall evaluate each complete application received and determine whether the parcel satisfies the eligibility criteria set forth in §82-6 and shall make recommendations thereon to the Authority.

(D) Evaluation by Authority. The Authority shall hold a public meeting to review the list of parcels submitted by the program administrator and identify on which parcels, if any, it desires conservation easements.

(E) Application. An owner of a parcel not selected by the Authority for purchase or acceptance of a conservation easement may reapply in any future year.

#### 82-10. Acceptance of easements.

Upon approval of an easement by the Authority pursuant to the terms of this ordinance, the proposed easement shall be forwarded to the Board of Supervisors for its approval. No easement shall be accepted unless approved by both the Authority and the Board of Supervisors. Upon approval by the Authority and the Board of Supervisors, and by any additional co-holder if applicable, the deed of easement shall be executed by all parties and recorded in the Shenandoah County Clerk's Office. **Nothing in this chapter shall obligate the Authority to purchase or accept a conservation easement on any property.**

82-11. Purchase of conservation easement.

Should the Authority desire to purchase an easement, the following procedures shall apply.

A. *Identification of initial pool.* For applications received under Section 9, in which the owner has indicated a desire to sell an easement, the program administrator shall determine the number of points to be attributed to each parcel by applying the criteria set forth in section 7. The program administrator shall rank each parcel scoring at least fifteen (15) points with the parcel scoring the most points being the highest ranked and descending therefrom. The program administrator shall submit the list of ranked parcels to the Authority. The Authority shall designate the initial pool of parcels identified for conservation easements to be purchased. The purchase price may be supplemented by non-county funding as discussed in Section 7 (F) above. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year.

B. *Additional application information required by program administrator.* The program administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; and (ii) the purchase price of such easement.

C. *Appraisal of conservation easement value.* Each conservation easement identified by the Authority to be purchased shall be appraised either by the County's assessor or by an independent qualified appraiser chosen by the Authority. Each completed appraisal shall be submitted to the program administrator and the owner. The program administrator shall forward each appraisal to the Authority, which shall review each appraisal.

D. *Invitation of offer to sell.* The Authority shall invite the owner of each parcel included in the initial pool of conservation easements to submit an offer to sell to the Authority a conservation easement on that parcel, subject to the terms and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the desired purchase price, the proposed deed of easement, and the date by which a written offer must be received by the program administrator in order to be considered. The invitation may contain an offer form to be returned if the owner desires to sell a conservation easement.

E. *Offer to sell.* Each owner who desires to sell a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement that substantially states the following: “(The owner) offers to sell a conservation easement to the Authority for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to offer.” Nothing in this chapter shall compel an owner to submit an offer to sell.

F. *Acceptance.* Nothing in this chapter requires the Authority to accept an offer to sell a conservation easement.

G. *Offers not made; offers not accepted; invitation to other owners.* If an owner invited to

submit an offer elects not to do so, or if his offer to sell is not accepted by Authority, then the Authority may send an invitation to offer to sell to other owners on the list.

H. *Costs.* If the Authority accepts an offer to sell a conservation easement, the Authority may pay all costs, including environmental site assessments, surveys, recording costs, grantor's tax, if any, and other charges associated with closing. Provided, however, the Authority shall not pay fees incurred for independent appraisals or legal, financial, or other advice, or fees in connection with the release and subordination of liens to the easement purchased by the Authority.

I. *Application.* An owner for whose parcel a conservation easement is not purchased may reapply in any future year.

J. *Special Consideration.* The Authority shall give special consideration and take immediate action to review applications in the special case where private funding is available to cover one hundred (100) percent of the cost of the purchase, or the owner is willing to donate the conservation easement at no cost to the county, provided that such parcel meet the eligibility requirements of this ordinance.

#### 82-12. Program funding.

The program created herein may, but is not required to, be funded annually by the Board of Supervisors in the County budget or by special appropriation. The Authority shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of this chapter. **Nothing in this chapter shall require the Board of Supervisors to fund this program.**

This Amendment will take effect upon its adoption.

Adopted:

ATTEST:

\_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Chairman, Board of Supervisors

CERTIFICATE

The undersigned Vincent E. Poling, County Administrator of Shenandoah County, Virginia, hereby certifies the foregoing constitutes a true and correct copy of an Ordinance entitled “An Ordinance Creating Chapter 82 ‘Conservation Easement Program’ of The Code of Shenandoah County” adopted by the Board of Supervisors at a regular meeting duly held and called on \_\_\_\_\_ for which proper notice was given. A record of the roll call vote by the Board is as follows:

Name	Aye	Nay	Abstain	Absent
John R. Neese				
Jim Patrick				
David E. Ferguson				
Sharon Baroncelli				
Dennis Morris				
Conrad Helsley				

\_\_\_\_\_, 2007  
Date

[SEAL]

\_\_\_\_\_  
Vincent E. Poling  
County Administrator  
Shenandoah County